

**AN ORDINANCE OF THE CITY OF ERLANGER, KENTUCKY, ADOPTING AN
UPDATED CHAPTER 44 OF THE CITY OF ERLANGER CODE**

WHEREAS, the City of Erlanger joined the Kenton County Joint Code Enforcement Board; and.

WHEREAS the City of Erlanger hereby wishes to comply with the rules and regulations promulgated for the Kenton County Joint Code Enforcement Board by creating an updated Chapter 44;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
ERLANGER, KENTON COUNTY AND THE STATE OF KENTUCKY THAT**

**SECTION ONE- ADOPTION OF AN UPDATED CHAPTER 44 OF ERLANGER CITY
CODE**

Underlined portions are to be added and portions stricken are to be removed.

§ 44.01 PURPOSE

The purpose of this article is to conform to all provisions of KRS 65.8801 through 65.8839, commonly known as the “Local Government Code Enforcement Boards Act” and any subsequent amendments thereto.

§ 44.02 DEFINITIONS

When used in this chapter, the words, phrases and terms defined in KRS 65.8805 shall have the same meaning as those provided in that statute.

§ 44.03 CREATION AND MEMBERSHIP

(A) Pursuant to KRS 65.8811(1)(a), the city shall participate in a Joint Code Enforcement Board through an interlocal agreement executed with other participating city and county members. This Joint Code Enforcement Board shall operate in lieu of a City Code Enforcement Board and have jurisdiction and authority throughout the City of Lakeside Park, Kentucky, in the same manner as a City Code Enforcement Board created under KRS 65.8811(1).

(B) The city’s representation on the Joint Code Enforcement Board is established through the interlocal agreement with the participating cities and/or Kenton County, and any and all amendments to the interlocal agreement. The city shall appoint one (1) member and one (1) alternate member to the Kenton County Joint Code Enforcement Board. All appointments shall be made by the Mayor, with approval of the City Council. Members of the Kenton County Joint Code Enforcement Board shall serve consistent with the provisions of the interlocal agreement.

(C) All appointments to the Kenton County Joint Code Enforcement Board shall be for a term of three (3) years. Upon expiration of a term, a member or alternate member may be re-appointed by the Mayor, with approval by the City Council.

(D) Each member and alternate member appointed by the city to the Kenton County Joint Code Enforcement Board shall have resided within the boundaries of the city for a period of at least one (1) year prior to the date of the member's appointment, and shall reside there throughout the term in office.

(E) In the event that the appointed member of the city vacates his or her membership on the Kenton County Joint Code Enforcement Board, the city shall, following the procedures in KRS 65.8811, fill the vacancy within sixty (60) days. If the Mayor has not filled the vacancy within sixty (60) days, then the remaining member of the Kenton County Joint Code Enforcement Board shall fill the vacancy with another person who meets the qualifications in KRS 65.8811. All vacancies shall be filled for the remainder of the unexpired term.

(F) Any member or alternate member appointed by the Mayor to the Kenton County Joint Code Enforcement Board, pursuant to KRS 65.8811, may be removed by the Mayor for misconduct, inefficiency, or willful neglect of duty. In the event of removal, the Mayor shall submit a written statement to the member subject to removal, and to the City Council, setting forth the reasons for removal. The member so removed shall have the right to appeal the removal to the Kenton County Circuit Court.

(G) Any member or alternate member shall, prior to entering their duties, take the oath of office prescribed by Section 228 of the Kentucky Constitution.

(H) The members of the Kenton County Joint Code Enforcement Board may be compensated or reimbursed per the terms of the interlocal agreement, and its amendments.

(I) No member or alternate member appointed by the city to the Kenton County Joint Code Enforcement Board shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the city.

(J) A copy of the governing interlocal agreement shall be maintained in the Office of the City Clerk for inspection by the public.

§ 44.04 ENFORCEMENT POWERS

(A) The Code Enforcement Board shall have the power to issue remedial orders and impose civil fines as a method of enforcing city ordinances when a violation of the ordinance has been classified as a civil offense.

(B) The Code Enforcement Board shall not have the authority to enforce any ordinance regulating conduct which would also, under any provision of the Kentucky Revised Statutes, constitute a criminal offense or a moving motor vehicle offense.

§ 44.05 APPOINTMENT OF MEMBERS; TERM OF OFFICE; REMOVAL FROM OFFICE; OATH; COMPENSATION; ORGANIZATION OF BOARD; MEETINGS; QUORUM; CONFLICT OF INTEREST; MINUTES AND RECORDS

Membership, oath and terms of office, quorum, vacancies, removal of members, and other statutory requirements related to the Board's activities shall be as stated in the Local Government Code Enforcement Board Act and as set forth by the interlocal agreement for the Kenton County Joint Code Enforcement Board filed of record with the Kenton County Clerk in Book C5439, Page 321, as incorporated by reference as set forth herein.

§ 44.06 POWERS OF THE CODE ENFORCEMENT BOARD

The Kenton County Joint Code Enforcement Board shall have the powers and duties as set forth by the interlocal agreement filed of record with the Kenton County Clerk in Book C5439, Page 321 as incorporated by reference as set forth herein.

§ 44.07 ENFORCEMENT PROCEEDINGS

The following requirements shall govern all enforcement proceedings before the Code Enforcement Board:

(A) Enforcement proceedings shall only be initiated by the issuance of a citation by a code enforcement officer.

(B) Except when immediate action is necessary pursuant to § 44.15, if a code enforcement officer believes, based on his or her personal observation or investigation, that a person has violated a city ordinance, he or she shall issue a notice of violation allowing the alleged violator a specified period of time to remedy the violation without incurring a fine. If the alleged violator fails or refuses to remedy the violation within the time specified, the Code Enforcement Officer is authorized to issue a citation.

(C) The Code Enforcement Officer shall issue a citation by one of the following methods:

(1) Personal service to the alleged violator;

(2) Leaving a copy of the citation with any person eighteen (18) years of age or older who is on the premises, if the alleged violator is not on the premises at the time the citation is issued; or

(3) Posting a copy of the citation in a conspicuous place on the premises and mailing a copy of the citation by regular, first-class mail to the owner of record of the property, if no one is on the premises at the time the citation is issued.

(D) The citation issued by the Code Enforcement Officer shall contain the following information:

(1) The date and time of issuance;

(2) The name and address of the person to whom the citation is issued;

(3) The physical address of the premises where the violation occurred;

(4) The date and time the offense was committed;

(5) The facts constituting the offense;

(6) The section of the code or the number of the ordinance violated;

(7) The name of the Code Enforcement Officer;

(8) The civil fine that may be imposed for the violation, including, if applicable:

(a) The civil fine that will be imposed if the person does not contest the citation; and

(b) The maximum civil fine that may be imposed if the person elects to contest the citation.

(9) The procedure for the person to follow in order to pay the civil fine or to contest the citation; and

(10) A statement that if the person fails to pay the civil fine set forth in the citation or contest the citation within the time allowed, the person shall be deemed to have waived the right to a hearing before the Code Enforcement Board to contest the citation; the determination that the violation was committed shall be final; the citation as issued shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation; and the person shall be deemed to have waived the right to appeal the final order to District Court.

(E) After issuing a citation to an alleged violator, the Code Enforcement Officer shall notify the Code Enforcement Board by delivering a copy of the citation to the Board Chairman.

(F) (1) The person to whom the citation is issued shall respond to the citation within seven (7) days of the date of issuance by either paying the civil fine or requesting, in writing, a hearing to contest the citation. If the person fails to respond to the citation within seven (7) days, the person shall be deemed to have waived the right to a hearing and the determination that a violation was committed shall be considered final. In this event, the citation as issued shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation, and the person shall be deemed to have waived the right to appeal the final order to District Court.

(2) Notice of a final order shall be provided to the cited violator by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice.

§ 44.08 HEARING; NOTICE; AND FINAL ORDER

(A) When a hearing has been requested, the Code Enforcement Board or its administrative staff shall schedule a hearing.

(B) Not less than seven (7) days before the date of the hearing, the Code Enforcement Board shall notify the requester of the date, time, and place of the hearing. The notice may be given by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice.

(C) (1) Any person requesting a hearing who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation, and the determination that a violation was committed shall be final. In this event, the citation as issued shall be deemed a final order determining the violation was committed and imposing the civil fine set forth in the citation, and the alleged violator shall be deemed to have waived the right to appeal the final order to District Court.

(2) Notice of a final order shall be provided to the cited violator by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice.

(D) All testimony at the hearing shall be taken under oath and recorded. Testimony shall be taken from the Code Enforcement Officer, the alleged violator, and any witnesses to the violation offered by the Code Enforcement Officer or alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(E) The Code Enforcement Board shall, based on the evidence, determine whether a violation was committed. If it is determined that no violation was committed, an order dismissing the citation shall be entered. If it is determined that a violation was committed, an order may be issued upholding the citation. The Board may impose a fine up to the maximum authorized by ordinance, or require the offender to remedy a continuing violation to avoid a fine, or both.

(F) (1) Every final order following a hearing shall be reduced to writing, which shall include the findings and conclusions reached and the date the order was issued. A copy shall be furnished to the person named in the citation.

(2) If the person named in the citation is not present when the final order is issued, the order shall be delivered to the person by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice.

§ 44.09 PRESENTATION OF CASES

Each case before the Code Enforcement Board may be presented by an attorney selected by the city, a code enforcement officer for the city, or by a member of the city's administrative staff.

§ 44.10 APPEALS; FINAL JUDGMENT

(A) An appeal from a final order of the Code Enforcement Board following a hearing conducted pursuant to § 44.08(E) may be made to the Kenton County District Court within thirty (30) days of the date the order is issued. The appeal shall be initiated by the filing of a complaint and a copy of the final order in the same manner as any civil action under the Kentucky Rules of Civil Procedure.

(B) If no appeal from a final order of the Code Enforcement Board is filed within the time period set in division (A) above, the Code Enforcement Board's order shall be deemed final for all purposes.

§ 44.11 ORDINANCE FINE SCHEDULE

Violations of ordinances that are enforced by the Kenton County Joint Code Enforcement Board shall be subject to the schedule of civil fines as set forth by separate ordinance.

§ 44.12 LIEN; FINES, CHARGES, AND FEES

(A) Complaints of violations of this chapter are generally received from the public, city staff, or observed by city citation officers. When a complaint is received, a citation officer is assigned the complaint. The Citation Officer shall document the complaint and determine if it is valid or unfounded. If found to be valid, the resident is notified of the violation through a warning or citation. A hearing disputing the warning/citation may be requested at this time. If a hearing is not requested, the Citation Officer will reinspect the violation in seven days. If the violation has been corrected and the property owner was given a warning, the case is closed and no further action is required. If the property owner was provided a citation, it becomes final and the property owner must pay their fine. All fines will be paid through the Clerk's Office and the City Clerk shall manage the collection of delinquent fines. Once delinquent fines/liens have exceeded \$3,000 in total, the Clerk's Office will notify the City Administrator, who will conduct a financial analysis to determine if foreclosure proceedings should be pursued.

(B) The city shall possess a lien on property owned by the person found by a non-appealable final order as defined by KRS § 65.8805(8), or by a final judgment of the court, to have committed a violation of a city ordinance. The lien shall be for all civil fines assessed for the violation and for all charges and fees incurred by the city in connection with the enforcement of the ordinance, including abatement costs.

(C) The lien shall be recorded in the Office of the County Clerk. The lien shall be noticed to all persons from the time of its recording and shall bear interest until paid. The lien shall continue for ten (10) years following the date of the non-appealable final order or final court judgment.

(D) Subject to § 44.13, the lien shall take precedence over all other liens, except state, county, school board, and city taxes, and may be enforced by judicial proceedings, including a foreclosure action.

(E) In addition to the remedy prescribed in division (A) above, the person found to have committed the violation shall be personally responsible for the amount of all civil fines assessed for the violation and for all charges, fees and abatement costs incurred by the city in connection with the enforcement of the ordinance. The city may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.

§ 44.13 LIENS

(A) A lienholder of record who has registered pursuant to § 44.12(B) may, within forty-five (45) days from the date of issuance of notification under § 44.12(C):

(1) Correct the violation, if it has not already been abated; or

(2) Pay all civil fines assessed for the violation, and all charges and fees incurred by the city in connection with enforcement of the ordinance, including abatement costs.

(B) Nothing in this section shall prohibit the city from taking immediate action if necessary under § 44.15.

(C) The lien provided by § 44.12 shall not take precedence over previously recorded liens if:

(1) The city failed to comply with the requirements of § 44.12 for notification of the final order;
or

(2) A prior lienholder complied with division (A) above.

(D) A lien that does not take precedence over previously recorded liens under division (C) above shall, if the final order remains partially unsatisfied, continue to take precedence over all other subsequent liens except liens for state, county, school board and city taxes.

(E) The city may record a lien before the forty-five (45) day period established in division (A) above expires. If the lien is fully satisfied prior to the expiration of the forty-five (45) day period, the city shall release the lien in the County Clerk's Office where the lien is recorded within fifteen (15) days of satisfaction.

(F) Failure of the city to comply with §§ 44.12 or 44.13, or failure of a lien to take precedence over previously filed liens as provided in division (C) above, shall not limit or restrict any other remedies the city has against the property of the violator.

§ 44.14 IMMEDIATE ACTION

Nothing in this article shall prohibit the city from taking immediate action to remedy a violation of its ordinances when there is reason to believe that the violation presents a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible.

SECTION II: Provisions Severable

The provisions of this Ordinance are severable; and the invalidity of any provision of this Ordinance shall not affect the validity of any other provision thereof; and such other provisions shall remain in full force and effect if they remain valid in the absence of those provisions determined to be invalid.

SECTION III: Conflicting Ordinances Repealed

All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION IV: Effective Date

This ordinance shall be effective as soon as possible according to law.

Adopted this _____ day of _____, 2023.

First Reading- _____, 2023

Second Reading- _____, 2023 Votes Cast _____ Yes _____ No

JESSICA FETTE, MAYOR

DATE: _____